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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,191	12/31/2001	Semyon Shchervinsky	ETH-1603	7167
27614	7590	11/19/2004	EXAMINER	
RALPH W. SELITTO, JR. C/O MCCARTER & ENGLISH, LLP GATEWAY CENTER FOUR 100 MULBERRY STREET NEWARK, NJ 07102			SCHAETZLE, KENNEDY	
			ART UNIT	PAPER NUMBER
			3762	
DATE MAILED: 11/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/039,191

Applicant(s)

SHCHERVINSKY, SEMYON

Examiner

Kennedy Schaetzle

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-12 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10,11 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 2-6 and 12 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 7 is objected to because of the following informalities: the reference to "said wire" is vague since both a conductive wire and a pacing wire have been previously recited. Judging from the disclosure, the examiner will assume it was the applicant's intent to refer to "said conductive wire" when considering the claim on the merits. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schladach (Pat. No. 5,922,015).

Regarding independent claim 12, Schladach discloses a temporary cardiac pacing wire (see col. 1, lines 6-40) having an anchor (a variety of embodiments for the anchor are shown in Figs. 1, 3, 5, 6 and 7). The anchor at least in part can be made from a bioabsorbable material (see col. 1, lines 51-59). Although Schladach does not explicitly refer to the use of a coating *per se*, given the particular anchor/thread arrangements set forth, those of ordinary skill in the art would have understood that the reference to the anchor being at least partially made of a bioabsorbable material would include the use of a bioabsorbable coating upon a non-absorbable substrate. Looking at the embodiment shown in Fig. 3, for example, it is easy to see that the tight friction fit of the thread within the slot 8 would loosen as desired if the walls of the slot were coated with such a material. Likewise with the holder edges 5.1 and 5.2 of the anchor shown in Fig. 1 and discussed in col. 5, lines 55-65. Artisans of ordinary skill in the medical electrode manufacturing arts given the disclosure of Schladach would have

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considered the use of a bioabsorbable coating to be a matter of obvious mechanical expediency.

Regarding claims 2 and 3, Schlachach teaches that polyglycol acid may be employed in the manufacture of the bioabsorbable component (col. 4, lines 40-44). The examiner considers such a material to be a polymer made from an organic monomer. In any event, the courts have long determined that the selection of a known material based upon its suitability for its intended use is a matter of obvious design (see *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and MPEP §2144.07).

Regarding claim 4, note the embodiment shown in Figs. 6 and 7. The examiner considers the blocking element 15 to broadly constitute a barbed harpoon-like shape (note col. 7, lines 1-6).

Regarding claim 5, Schlachach does not explicitly show an embodiment containing a single barb. Schlachach, however, teaches that the particular embodiments shown are only exemplary and that a number of anchor variants are possible (col. 7, lines 48-56). Clearly any known anchor arrangement capable of maintaining the lead in fixed position and allowing for non-traumatized removal would have been considered suitable to the task. Artisans of ordinary skill in the art would have therefore considered the use of a single barb to be a matter of obvious design.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlachach as applied to claims 2-5 and 12 above, and further in view of Tarjan et al. (Pat. No. 4,475,560).

Schlachach does not discuss the use of an electrode made from an electrically conductive wire having a generally circular shape in transverse cross-section. The use of a conductive wire of circular cross-section to form an electrode in the cardiac stimulation arts is old and well-known. Tarjan et al., for example, disclose the use of a conductive coil 14 for forming, at least in part, a temporary pacing electrode (the use of a coil to form the entire electrode is also old and well-known in the cardiac stimulation arts). Clearly the electrode shown in Fig. 3 of Schlachach is not restricted to any one particular form since it does not directly interact with the anchor. Artisans of ordinary

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skill would have considered any known electrode configuration suitable to the task of pacing and enabling uncomplicated extraction to be appropriate for the system disclosed by Schaldach. The use of electrodes formed from round conductive wire would have therefore been considered obvious.

***Allowable Subject Matter***

5. Claims 10, 11 and 18-20 are allowed.

Reasons for allowance have been given in the previous Office Action.

6. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 7, there is no suggestion to modify the art of record to incorporate a temporary pacing wire with a barb made from a flattened section of the same wire used to construct the surgical electrode.

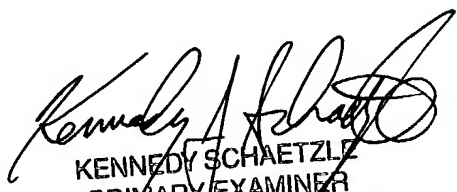
***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy Schaetzle whose telephone number is 571 272-4954. The examiner can normally be reached on M-W and F from 9:30 -6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached at 571 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KJS  
November 18, 2004

  
KENNEDY SCHAETZLE  
PRIMARY EXAMINER